



The New York Times
Company

David McCraw
Vice President & Deputy
General Counsel

T 212 556 4031

mccraw@nytimes.com

620 8th Avenue
New York, NY 10018
nytimes.com

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VIA FEDERAL EXPRESS

The Honorable Margo K. Brodie
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn New York 11201

Re: United States v. Leissner, 18-cr-439-MKB – Sealed Plea Hearing
Transcript

Dear Judge Brodie:

I write on behalf of The New York Times Company (“The Times”) to request that the Court review the continued partial sealing of the transcript of Defendant Tim Leissner’s plea hearing, which took place on August 28, 2018 in a closed proceeding. As the Court will recall, in response to our earlier letter motion (enclosed here), the Court ordered the Government to make public a redacted version of the hearing transcript pursuant to a sealed order. *See* Dkt. Entry for November 8, 2018. The Times this week asked the Government whether, with the passage of time and any change in circumstances, it can now release the redacted portions of the transcript. The Government has declined to do so.

Because the Court’s November 8 order was sealed, The Times does not know the basis for the redactions. However, The Times is particularly concerned about the sealing since one section appears to address the conditions of Mr. Leissner’s bail and release.¹ Decisions on those matters have long been viewed as matters that should be made public pursuant to

¹ As the Court is aware, the bond for Mr. Leissner’s release was initially set at \$20 million, *see* Dkt. 5, but the bond conditions were later modified at the plea hearing, *see* Dkt. Entry for August 28, 2018. To The Times’s knowledge, the identity of the surety who initially signed the bond has not been disclosed.

the First Amendment right of access to court proceedings and records. *See, e.g.*, *United States v. Graham*, 257 F.3d 143, 154 (2d Cir. 2001) (“The bail decision is one of major importance to the administration of justice, and openness will help to assure the public that the decision is properly reached.” (quoting *In re Globe Newspaper Co.*, 729 F.2d 47, 52 (1st Cir. 1984)) (internal marks and alterations omitted).

The Justice Department’s own policies require regular review of court records that have been sealed. Given “the vital public interest in open judicial proceedings,” the Government has an “affirmative obligation” to review sealing every 60 days after the termination of any proceeding closed to the public. *See* Justice Manual, § 9-5.150, <https://bit.ly/2NnqtWo>. The Government must make records available “as soon as the justification for closure ceases.” *Id.*

Because the basis for the sealing has not been disclosed, The Times does not know whether a change in circumstances has occurred to justify release of the redacted portions of the transcript. However, the Court’s adjournment of Mr. Leissner’s sentencing from January to June 2019, *see* Dkt. Entry for January 14, 2019, means that he is likely to be out on bail for at least another six months (and for a total period of over a year). The longer the period of Mr. Leissner’s release on bail, the more compelling the public interest in knowing about the conditions of that release – particularly because Mr. Leissner has already pleaded guilty. The progress of the Government’s investigation regarding the 1MDB scheme since early November also means that the need for sealing may have lessened here.²

The Times respectfully asks that the Court assure that the Government is living up to its obligation to take steps to make certain that judicial records are unsealed as soon as practicable. It also requests that the Court consider unsealing its November 8 order on the same grounds.

² *See, e.g.*, Department of Justice, Former Justice Department Employee Pleads Guilty to Conspiracy to Deceive U.S. Banks about Millions of Dollars in Foreign Lobbying Funds (Nov. 30, 2018), <https://bit.ly/2PbHdQ3>.

We thank the Court for its consideration of the matter.

Respectfully submitted,

D. McCraw

David McCraw

Enclosures